ICTR-98-44-T
6-3-2007
(28523-28491)

28523
HM

UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ORIGINAL: ENGLISH AND FRENCH

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
*sitting pursuant to Rule 15*bis *of the Rules of Procedure and Evidence*

Registrar: Adama Dieng

Date: 6 March 2007

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

DECISION ON CONTINUATION OF THE PROCEEDINGS

Rule 15*bis *of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Alayne Frankson-Wallace
Iain Morley
Saidou N'Dow
Sunkarie Ballah-Conteh
Takeh Sendze

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

INTRODUCTION

1. The trial in this case started on 19 September 2005 with the presentation of the Prosecution case over four trial sessions. Thirteen Prosecution Witnesses have been heard so far by Trial Chamber III composed of Judge Dennis C. M. Byron, presiding, Emile Francis Short and Gberdao Gustave Kam.

2. On 19 January 2007, Judge Short informed in writing the Presiding Judge that he had decided to withdraw from the case due to recent health challenges he had been undergoing.[1] On the same day, in accordance with Rule 15 *bis* (C) of the Rules of Procedure and Evidence, Judge Byron notified the President of the Tribunal of Judge Short's inability to continue sitting in the instant case.[2]

3. As a result, in accordance with the Rules,[3] the President requested the Defence Counsel to indicate, by 29 January 2007, whether the Accused persons consent to the continuation of the proceedings after the assignment of a new Judge to replace Judge Short, and if not, to state the reasons thereto.[4] In order to minimize any delay in the trial of the co-Accused, the remaining Judges also issued a scheduling order whereby the Parties were instructed to file any submission on the rehearing or continuation of the proceedings by 31 January 2007.[5]

4. In their submissions to the President, Joseph Nzirorera and Mathieu Ngirumpatse indicate that they withhold their consent to the continuation, while Edouard Karemera agrees to a continuation of the proceedings with a substitute Judge provided that the latter ensures his or her perfect knowledge of the case.[6] Under these circumstances, and since the Prosecutor had already started the presentation of his evidence, the President referred the

[1] Letter from Judge Short to Judge Byron dated 19 January 2007, filed confidentially on 25 January 2007.
[2] Letter from Judge Byron to the President dated 19 January 2007, filed confidentially on 25 January 2007.
[3] Rules of Procedure and Evidence, Rule 15*bis* (C): "If by reason of death, illness, resignation from the Tribunal, non-reelection, non extension of term of office or for any other reason, a Judge is unable to continue sitting in a part-heard case for a period which is likely to be longer than a short duration, the Presiding Judge shall report to the President who may assign another Judge to the case and order either a rehearing or continuation of the proceedings from that point. However, after the opening statements provided for in Rule 84, or the beginning of the presentation of evidence pursuant to Rule 85, the continuation of the proceedings can only be ordered with the consent of the accused, except as provided for in paragraph (D)".
[4] Letter from the President filed on 24 January 2007.
[5] *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Scheduling Order for the Filing of Submissions (TC), 24 January 2007.
[6] Letter from Mr. Robinson to the President, filed on 23 January 2007; Letter from Mrs. Hounkpatin to the President, filed on 29 January 2007; Memorandum from Mrs. Dior Diagne Mbaye and Mr. Moussa Felix Sow to the President, filed on 29 January 2007.

matter to the remaining Judges in the instant case to decide whether to continue the proceedings with a substitute Judge in accordance with Rule 15 *bis* (D).[7]

5. On 30 and 31 January 2007, the Prosecutor and Joseph Nzirorera respectively filed, with the remaining Judges, their submissions on the continuation of the proceedings.[8] Mathieu Ngirumpatse and Edouard Karemera filed their submissions late,[9] although they were also sent by email and fax to the Court Management Section on 31 January 2007. In the interests of justice and considering the right of the Accused to be heard, the remaining Judges find appropriate to take into consideration these submissions. For the same reasons, the additional submissions filed by Nzirorera as a result of the President's Memorandum referring the matter to the remaining Judges will also be taken into consideration.[10]

DELIBERATIONS

PRELIMINARY MATTER

6. Joseph Nzirorera submits that in the Memorandum referring the matter to the remaining Judges, the President has not clearly stated the reasons for his decision, and particularly whether he considered that he had the discretion under Rule 15 *bis* (C) of the Rules to order a rehearing, or, if he believed that he had such discretion, what factors he took into consideration in exercising that discretion not to order a rehearing.[11] According to Nzirorera, should the remaining Judges decide to continue the trial, it will be impossible for the Appeals Chamber to determine how the President exercised his discretion.[12] He also contends that the remaining Judges themselves would benefit from a reasoned opinion from the President as well, since many of the same issues raised before the President will be before the remaining Judges.[13] The Accused therefore requests that before making a decision, the remaining Judges refer the matter back to the President for a reasoned opinion on the issue of whether a rehearing of the trial should be ordered.

---

[7] Interoffice Memorandum from the President to Judge Byron, filed on 6 February 2007.
[8] Prosecutor's Submissions Pursuant to Rule 15 *bis* (D), filed on 30 January 2007; Joseph Nzirorera's Submission to Remaining Judges in Support of a New Trial, filed on 31 January 2007.
[9] Soumission pour M. Ngirumpatse sur la Scheduling Order for Filing the Submissions Rules 15 bis D, filed on 1 February 2007 ; Réponse de Edouard Karemera à la « Scheduling Order for the Filing of Submissions Rule 15 bis RPP", filed on 5 February 2007.
[10] Joseph Nzirorera's Further Submission to Remaining Judges, filed on 8 February 2007.
[11] *Ibid.*, para. 7.
[12] *Ibid.*, paras. 11 and 12.
[13] *Ibid.*, para. 13.

7. The remaining Judges are not an appellate body for the President's decisions and they are therefore not competent to make a finding as to whether he properly exercised his discretionary power under Rule 15 *bis* (C). According to the powers enshrined in the Rules, since the matter has been referred by the President, the remaining Judges have now to determine, in light of all the circumstances of the case and on the basis of the Parties' submissions, whether a rehearing or a continuation of the proceedings would better serve the interests of justice.

8. Furthermore, as emphasized by the Appeals Chamber, there are various safeguards against arbitrariness when the Judges decide upon the continuation or rehearing of the proceedings under Rule 15 *bis* (D): "the decision by the two remaining judges is a judicial one; it is taken after hearing both sides; the two remaining judges know the case as it has so far developed; their decision must be unanimous; an appointment can only be made once".[14] Furthermore, in the present case, the same 66-page submission was filed with both the President and the remaining Judges.[15] Consequently, the submissions made by Joseph Nzirorera before the President will be heard by a judicial organ whose decision is subject to appeal directly to a full bench of the Appeals Chamber.[16] The rights of the Accused are therefore fully guaranteed despite the alleged impossibility for the Appeals Chamber to review the President's Decision.

9. Joseph Nzirorera's request to refer the matter back to the President therefore falls to be rejected.

ON THE MERITS

10. Rule 15 *bis* (D) of the Rules provides that if, after the beginning of the presentation of the evidence, "the accused withholds his consent [for the continuation of the proceedings with a substitute Judge], the remaining Judges may nonetheless decide to continue the proceedings before a Trial Chamber with a substitute Judge if, taking all the circumstances into account, they determine unanimously that doing so would serve the interests of justice".

---

[14] *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A15bis, Decision in the Matter of Proceedings Under Rule 15bis (D) (AC), 24 September 2003, para. 18 ("*Nyiramasuhuko* Appeals Chamber Decision on Continuation").

[15] Except for a few portions, the content of the submission filed by the Defence for Nzirorera before the President is identical to the one filed with the remaining Judges.

[16] See: Rule 15 *bis* (D); *Nyiramasuhuko* Appeals Chamber Decision on Continuation, para. 18.

11. In the present case, Joseph Nzirorera and Mathieu Ngirumpatse withhold their consent to the continuation of the proceedings with a substitute Judge.[17] Edouard Karemera consents to the continuation provided that some of his concerns are duly taken into consideration.[18] The Prosecutor presents submissions also in favour of a continuation of the proceedings.[19]

12. According to the ordinary meaning of Rule 15 *bis* (D) and as the Appeals Chamber previously emphasized, the remaining Judges must determine that it is in the interests of justice to continue the proceedings.[20] Therefore, even if the Judges finds Accused's arguments in favour of a rehearing of the case not persuasive, they still must make the finding that a continuation would best serve the interests of justice.

13. Under the sections hereinafter, the remaining Judges will deal first with the equal right of each co-Accused to be heard on whether or not to continue the proceedings; second, the issue of the fairness of the trial; third, what would best serve the interests of justice in light of all the circumstances of this case, including in light of the parties' submissions.

I. Equal Rights of the Co-Accused to Be Heard on the Continuation, or not, of the Proceedings

14. Joseph Nzirorera, joined by Mathieu Ngirumpatse,[21] submits that while the remaining Judges are able to order the continuation of the trial over the objection of the accused, the lack of consent must be given great weight in the decision whether or not to proceed.[22] To support his assertion, the Accused relies upon the Appeals Chamber decision on continuation in the *Nyiramasuhuko et al.* case.[23]

15. The remaining Judges note that in the *Nyiramasuhuko et al.* case, the Appeals Chamber "takes the view that, though apparently absolute, the right to consent to continuation of the trial was not proprietorial but functional".[24] The Appeals Chamber explained that "[t]he right to consent gave protection against possible arbitrariness in the exercise of the power of the Tribunal to continue the hearing with a substitute judge; consent

[17] See submissions filed respectively on 31 January 2007 and 1 February 2007.
[18] Réponse de Edouard Karemera à la « Scheduling Order for the Filing of Submissions Rule 15 bis RPP", filed on 5 February 2007.
[19] Submissions filed on 30 January 2007.
[20] *Karemera et al.*, Case No. ICTR-98-44-T, Reasons For Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 22 October 2004, para. 49 ("*Karemera* Appeals Chamber Decision on Continuation").
[21] In addition to presenting his own arguments, Mathieu Ngirumpatse joins the arguments developed by Joseph Nzirorera (Ngirumpatse's submissions, para. 5).
[22] Nzirorera's submissions, para. 12.
[23] *Nyiramasuhuko* Appeals Chamber Decision on Continuation.
[24] *Nyiramasuhuko* Appeals Chamber Decision on Continuation, para. 17.

was only a safeguard".[25] It found that Rule 15 *bis* as amended in 2003 contains various safeguards which offer an equivalent protection against arbitrariness as offered by the prior Rule when limiting any continuation to the consent of the accused.[26]

16. Contrary to Joseph Nzirorera's assertion, it cannot be concluded from these findings that the Appeals Chamber held the view that the lack of consent is the determining factor in the decision whether or not to proceed. As set forth in Rule 82 of the Rules, "in a joint trial each of the accused shall be accorded the same rights as if he were being tried separately".[27] When deciding upon the continuation of proceedings, the remaining Judges must take into consideration all the circumstances of the case, including the reasons given by the accused for consenting or not to the continuation and the issues raised by the parties. The fact that one of the Accused in the present case has consented to the continuation of the trial is as relevant to the interests of justice as the opposition of two other co-Accused.

2. Fairness of the Trial

17. Joseph Nzirorera, joined by Mathieu Ngirumpatse, submits that the interests of justice would not be served by continuing the trial because this will perpetuate an unfair trial and the proceedings are likely not to be sustained on appeal due to errors of law made during the portion of the trial already completed. He contends that the trial has been rendered unfair due to seven causes: (1) the continuous violation by the Prosecutor of his disclosure obligations under Rules 66(A)(ii), 66(B) and 68 of the Rules; (2) the wholesale admission of material facts not charged in the Indictment; (3) an unjustified use of anonymous witnesses; (4) the presentation by the Prosecutor of perjured testimonies; (5) the failure of the Rwandan authorities to produce statements of Prosecution witnesses; (6) the taking of important testimonies by video-link, and (7) the Prosecutor's interference with the Defence's right to meet witnesses. For each instance, Nzirorera provides details as to the factual circumstances surrounding the issues at stake and the decisions thereto.

---

[25] *Ibidem.*

[26] The Appeals Chamber found that "[t]he new Rule 15*bis* contains various safeguards: the decision by the two remaining judges is a judicial one; it is taken after hearing both sides; the two remaining judges know the case as it has so far developed; their decision must be unanimous; an appointment can only be made once. Further, there is an unqualified right of appeal by either party from the decision taken by the two remaining judges direct to a full bench of the Appeals Chamber. Finally, in cases where the Appeals Chamber affirms the Trial Chamber's decision or if no appeal is lodged, the newly assigned judge must certify that he has familiarised himself with the record of the proceedings; if he cannot give the required certificate of familiarisation, he cannot eventually be substituted" (*Nyiramasuhuko* Appeals Chamber Decision on Continuation, para. 18).

[27] See *also Prosecutor v. Nyiramasuhuko et al.*, Joint Case No. ICTR-98-42-A15bis, Dissenting Opinion of Judge David Hunt (AC), 24 September 2003, para. 23.

18. Under the subsequent sections, the remaining Judges will consider each issue raised by Joseph Nzirorera to support his assertion that the trial has been rendered unfair.

i. Disclosure Issues

19. Joseph Nzirorera, supported by Mathieu Ngirumpatse, contends that the consistent violation by the Prosecutor of his disclosure's obligations has impeded the cross-examination of virtually every Prosecution witness called so far in the trial and has disrupted the investigation and preparation of the defence.[28]

20. To support its application, Joseph Nzirorera claims the existence of various Prosecutor's failures to disclose documents during the first trial against Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and André Rwamakuba that started in November 2003.[29] Such violations, if established, are however not relevant to the fairness of the current trial which started afresh on 19 September 2005.[30]

21. Joseph Nzirorera then describes disclosure problems prior to the commencement of this trial as well as during each trial session.[31] He submits that the systematic and cumulative failure to provide timely disclosure amounts to denying his right to fair trial, and particularly his right to cross-examine witnesses. In his view, this cannot be cured by recalling all of these witnesses and confronting them with the results of its post-testimony investigation and disclosures.

22. The remaining Judges note that the disclosure issues raised by Joseph Nzirorera have already been adjudicated upon. Over a period of two years, more than 50 decisions were

[28] Nzirorera's submissions, paras. 23-109.
[29] *Ibid.*, paras. 26-27.
[30] The trial against Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and André Rwamakuba commenced on 27 November 2003 before Trial Chamber III composed of Judges Vaz, presiding, Arrey and Lattanzi. On 14 May 2004, Judge Vaz withdrew from the case. On 16 July 2004, the remaining Judges decided that it would be in the interests of justice to continue the trial with a substitute Judge. The Appeals Chamber quashed this Decision (*Karemera et al.*, Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 28 September 2004; Reasons For Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 22 October 2004). As a result a rehearing of the case was necessary. Judges Byron, presiding, Short and Kam were then assigned to this trial. At the Prosecution's request, the Chamber granted the severance of André Rwamakuba and ordered that he be tried separately (*Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44-PT, Decision on Severance of André Rwamakuba and for Leave to File an Amended Indictment (TC), 14 February 2005).
[31] Nzirorera's submissions, paras. 28-103.

delivered on disclosure issues only, including reconsideration of prior decisions and certification to appeal.[32]

[32] See: Decision on Disclosure of Witness Reconfirmation Statements (TC), 23 February 2005; Scheduling Order (TC), 24 March 2005; *Décision relative à la requête du Procureur en prolongation de délai* (TC), 15 April 2005 ; Decision on Motion To Unseal *Ex Parte* Submissions and To Strike Paragraphs 32.4 and 49 from the Amended Indictment (TC), 3 May 2005; Order For Filing Documents (TC), 5 May 2005; Order For Filing Documents (TC), 11 May 2005; Order Granting Time To Reply To Additional Prosecution's Submission (TC), 16 May 2005; Decision on Joseph Nzirorera's Motion For Deadline For Filing of Reports of Experts (TC), 16 May 2005; Decision on Joseph Nzirorera's Motion to Compel Inspection and Disclosure (TC), 5 July 2005; Decision on Defence Motion for Full Disclosure of Payments to Witnesses and to Exclude Testimony from Paid Witnesses (TC), 23 August 2005; Decision on Prosecutor's Notice of Delay in Filing Expert Reports and Request for Additional Time to Comply with the Chamber Decision of 16 May 2005 (TC), 9 September 2005; Decision on Motions to Compel Inspection and Disclosure and to Direct Witnesses to Bring Judicial and Immigration Records (TC), 14 September 2005; Decision on Continuance of Trial (TC), 14 September 2005; Oral Decision on Ngirumpatse Motion to exclude the 143 Prosecution witness statements filed on 4 July 2005, T. 14 September 2005, p. 1; Decision on Motion to Set Deadlines For Filing Expert Reports of Norwojee and Reyntjens (TC), 20 September 2005; Oral Decision on Joseph Nzirorera's Motion to Exclude the Testimony of Witness GFJ, T. 20 September 2005, p. 2; Oral Decision Joseph Nzirorera's Motion seeking certification to appeal Decision on Motion to Exclude the Testimony of Witness GFJ, T. 20 September 2005, p. 47; Oral Decision on Exclusion of Testimony of Alison Des Forges and Granting Extension of Time for Disclosure of the Expert Report, T. 3 October 2005, p. 26; Decision on Defence Motion for Disclosure of Prosecution *Ex Parte* Motion under Rule 66(C) and Request for Cooperation of a Certain State (TC), 14 October 2005; Decision Granting Extension of Time to File Prosecution Expert Report (TC), 8 November 2005; Decision on Prosecution Request for Additional Time to file Expert Report and Joseph Nzirorera's Motion to Exclude Testimony of Charles Ntampaka (TC), 12 December 2005; Scheduling Order (TC), 13 December 2005; Order on Filing of Expert Report of Andre Guichaoua (TC), 15 December 2005; Order On Filing of Expert Report of Charles Ntampaka (TC), 31 January 2006; Decision on Prosecutor's Notice of Delay in Filing Expert Report of Professor André Guichaoua; Defence Motion to Exclude the Witness' Testimony; and Trial Chamber's Order to Show Cause (TC), 1 February 2006; Decision on Delay in Filing Expert Report of Charles Ntampaka (TC), 13 February 2006; Decision on Defence Motion to Report Government of a Certain State to United Nations Security Council and on Prosecution Motions under Rule 66(C) of the Rules (TC), 15 February 2006; Oral Decision on Stay of Proceedings, T. 16 February 2006, pp. 2 and seq.; Oral Decision on Request for Certification of Compliance with Rule 68, T. 22 February 2006, pp. 8 to 10; Oral Decision To Exclude or Postpone the Testimony of Witness UB, T. 22 February 2006, pp. 7 and 8; *Décision relative à la requête aux fins d'inspecter certains documents* (TC), 24 February 2006; Oral Decision on Certification of the Oral Decision of 16 February 2006 For Stay of Proceedings, T. 28 February 2006, p. 41; Oral Decision on the Motion for Inspection of Non-Rule 68 Material, T. 9 March 2006, pp. 16-19; Décision sur la requête d'Edouard Karemera aux fins de certification d'appel (TC), 10 March 2006; Decision on Requests for Certification to Appeal Decision on Defence Motion to Report Government of a Certain State to United Nations Security Council and Prosecution Motions under Rule 66(C) (TC), 14 March 2006; *Décision relative aux requêtes de Mathieu Ngirumpatse aux fins d'exclusion des notices du Procureur ou d'ajournement de l'audition des témoins ALG et AW3* (TC), 15 March 2006; Decision on Requests For Disclosure of Witness T's Immigration Records (TC), 17 March 2006; Decision on Defence Motions To Exclude Testimony of Professor Andre Guichaoua (TC), 20 April 2006; Decision on Defence Motion For Disclosure or Inspection of Hand-Written Notes From OTP Investigator (TC), 26 April 2006; Decision on Defence Motions for Disclosure of Information Obtained From Juvénal Uwilingiyimana (TC), 27 April 2006; Oral Decision on Nzirorera Motion for disclosure of payments and benefits for G and T, T. 23 May 2006, pp. 1 and 2; Oral Decision on late disclosure of Witness T's Statement and Imposing a Warning pursuant to Rule 46(A) to the Prosecution, T. 24 May 2006, pp. 35-36; Oral Decision on disclosure of material from Joseph Serugendo, T. 30 May 2006, pp. 62-64; Oral Decision on Motion for Reconsideration of the Chamber's Decision of 15 February 2006, T. 30 May 2006; Decision On Prosecution's Motion To Permit Limited Disclosure Of Information Regarding Payments And Benefits Provided To Witness ADE And His Family (TC), 21 June 2006; Oral Decision on Five Defence Motions, T. 6 June 2006, pp. 17-18; Decision on Joseph Nzirorera's Notice of Violation of Rule 68 and Motion For Remedial Measures (TC), 4 July 2006; Oral Decision on Late Disclosure regarding Witness XBM, T. 6 July 2006; Oral Decision on the Postponement of the Testimony of Witness G, T. 10 October 2005, p. 18; Decision on Motions to Disclose a Prosecution Witness Statement and to Unseal Confidential Documents (TC), 25 October 2006; Decision on Defence Motion for Disclosure of RPF Material for Sanctions Against the Prosecution (TC), 19 October 2006 (in that Decision, the Chamber also imposed a sanction against the Prosecution pursuant to Rule

23. It is not relevant for the remaining Judges to reiterate the prior reasoning and findings which are disputed in the current Joseph Nzirorera's submissions. It is, however, necessary to emphasize that in each relevant instance, the rights of the Accused persons were duly taken into consideration. As a result, the Trial Chamber found that either there was no prejudice caused to the Accused persons[33] or, if there was any, it ordered an appropriate remedy considering the circumstances of the case.[34] In that respect, Nzirorera particularly contends that the recall of a witness is an insufficient remedy to the prejudice resulting from a late disclosure. He further submits that a new cross-examination of Prosecution Witness BTH cannot mitigate the prejudice concerning this witness since he would be now a fugitive and have fled Rwanda.[35] As the Appeals Chamber already noted,[36] the adequacy of this remedy in this instance has not been tested given that Nzirorera has not yet sought to recall any witness, including Witness BTH. In addition, the application to have the witness recalled is only warranted if the Chamber is satisfied that the seeking party shows a good cause, namely and principally in the present situation that new material produces matters which could be

46(A) of the Rules and accordingly requested the Registry to serve its Decision on the Prosecutor in person); Decision on Defence Motion to Report Government of Rwanda to United Nations Security Council (TC), 2 October 2006; Decision on Defence Motion to Compel Best Efforts to Obtain and Disclose Statements and Testimony of Witness UB (TC), 10 October 2006; Decision on Motion for Disclosure of Closed Session Transcripts and Exhibits (TC), 12 October 2006; Oral Decision on Disclosure regarding Witness HH, 17 November 2006.

[33] See for e.g.: Decision on Prosecutor's Notice of Delay in Filing Expert Reports and Request for Additional Time to Comply with the Chamber Decision of 16 May 2005 (TC), 9 September 2005; Decision on Continuance of Trial (TC), 14 September 2005; Oral Decision on Exclusion of Testimony of Alison Des Forges and Granting Extension of Time for Disclosure of the Expert Report (TC), T. 3 October 2005, p. 26; Decision Granting Extension of Time to File Prosecution Expert Report (TC), 8 November 2005; Decision on Prosecution Request for Additional Time to file Expert Report and Joseph Nzirorera's Motion to Exclude Testimony of Charles Ntampaka (TC), 12 December 2005; Decision on Prosecutor's Notice of Delay in Filing Expert Report of Professor André Guichaoua; Defence Motion to Exclude the Witness' Testimony; and Trial Chamber's Order to Show Cause (TC), 1 February 2006; Decision on Delay in Filing Expert Report of Charles Ntampaka (TC), 13 February 2006; Decision on Defence Motion to Report Government of a Certain State to United Nations Security Council and on Prosecution Motions under Rule 66(C) of the Rules (TC), 15 February 2006; Oral Decision To Exclude or Postpone the Testimony of Witness UB (TC), T. 22 February 2006, pp. 7 and 8; Decision on Defence Motions To Exclude Testimony of Professor Andre Guichaoua (TC), 20 April 2006; Oral Decision on Five Defence Motions (TC), T. 6 June 2006, pp. 17-18; Decision on Joseph Nzirorera's Notice of Violation of Rule 68 and Motion For Remedial Measures (TC), 4 July 2006; Decision on Motions to Disclose a Prosecution Witness Statement and to Unseal Confidential Documents (TC), 25 October 2006.

[34] See for e.g.: Oral Decision on late disclosure of Witness T's Statement and Imposing a Warning pursuant to Rule 46(A) to the Prosecution, T. 24 May 2006, pp. 35-36; Oral Decision on disclosure of material from Joseph Serugendo, T. 30 May 2006, pp. 62-64; Oral Decision on Late Disclosure regarding Witness XBM, T. 6 July 2006.

[35] Nzirorera's Submissions, para. 76.

[36] *Karemera et al.*, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, para. 10.

exculpatory or affect the witness's credibility, which has not been alleged so far by Nzirorera either.[37]

24 It must also be noted that in other circumstances where no prejudice to the rights of the Accused was found, the Trial Chamber, nonetheless, made further arrangements to ensure that the fairness of the trial be preserved.[38]

25. Two of the Trial Chamber's decisions, however, merit particular attention since they addressed a wide range of disclosure issues raised by Joseph Nzirorera, and therefore the issue of the fairness of the trial as a whole.[39] In July 2005, before the commencement of the presentation of the Prosecution evidence, Nzirorera, joined by Mathieu Ngirumpatse, filed a motion seeking a stay of proceedings on the basis, among other things, that disclosures of

---

[37] In the *Bagosora et al.* case, the Trial Chamber recently recalled the standards for recalling a witness (*Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Bagosora Defence Motion to Recall Witness Frank Claeys for Additional Cross-Examination (TC), 19 February 2007, para. 3):

> A party seeking to recall a witness must demonstrate good cause, which previous jurisprudence has defined as a substantial reason amounting in law to a legal excuse for failing to perform a required act. In assessing good cause, the Chamber must carefully consider the purpose of the proposed testimony as well as the party's justification for not offering such evidence when the witness originally testified. The right to be tried with undue delay as well as concerns of judicial economy demand that recall should be granted only in the most compelling of circumstances where the evidence is of significant probative value and not of a cumulative nature.

[38] See for e.g.: *Oral Decision on Joseph Nzirorera's Motion to Exclude the Testimony of Witness GFJ*, T. 20 September 2005, p. 2:

> The Chamber is of the view that the documents disclosed to the Defence on 8 September 2005, pertaining to Witness GFJ, does not fall within the ambit of Rule 66(A)(ii) of the Rules but merely under the practice which has developed, subject to considerations of the interest of justice, of requiring the intervention of the Prosecution to obtain and disclose certain records, specifically including Rwandan judicial records of Prosecution witnesses. The Prosecution, therefore, did not fail to comply with its disclosure obligations under Rule 66(A)(ii).
>
> In addition, the Chamber notes that the documents were disclosed in Kinyarwanda, a language that the Accused understands. The Chamber, however, accepts the Defence concerns with respect to the fairness of the trial and the preparation of the Defence and is of the view that time and facilities should be granted to the Defence.

See also: Decision on Joseph Nzirorera's Notice of Violation of Rule 68 and Motion For Remedial Measures (TC), 4 July 2006; Oral Ruling on the Extension of Time to Cross-Examine of Witness GFJ, T. 27 October 2005, p. 60; Oral Ruling on Application to Have Witness Ahmed Napoléon Mbonyunkiza Recalled, T. 28 October 2005, pp. 10 and 11.

See also other decisions where the Chamber explicitly recalled that it has the ability to manage the trial to ensure that a delay in disclosure will not manifest in unfairness to the Accused, and that if, when a witness is called to testify, the Chamber is of the view that the Accused has still not had enough time to prepare or investigate and that this has resulted in unfairness to the Accused, it will then be open to the Chamber to consider exclusion of the witness' evidence or other appropriate remedy: Decision on Prosecutor's Notice of Delay in Filing Expert Report of Professor André Guichaoua; Defence Motion to Exclude the Witness' Testimony; and Trial Chamber's Order to Show Cause (TC), 1 February 2006, para. 11; Decision on Delay in Filing Expert Report of Charles Ntampaka (TC), 13 February 2006, para. 7; Decision on Defence Motion to Report Government of a Certain State to United Nations Security Council and on Prosecution Motions under Rule 66(C) of the Rules (TC), 15 February 2006, para. 26; *Oral Decision on the Postponement of the Testimony of Witness G* (TC), T. 10 October 2005, p. 18.

[39] *Karemera et al.*, Decision on the Continuance of Trial (TC), 14 September 2005; Oral Decision on Stay of Proceedings, T. 16 February 2006.

Prosecution witness statements and exculpatory material under Rules 66(A)(ii) and 68 of the Rules remained incomplete.[40] The Chamber denied the motion, as follows:

> The Chamber notes that most of the contentious disclosure issues have been addressed by the recent Chamber Decisions. The Expert Reports are scheduled to be disclosed within the next two months, and will not prejudice the rights of the Accused since none of these experts are scheduled to be heard before next year and the Defence has an overall knowledge of prior reports from the same experts. With respect to Rule 68 material, the Chamber recalls that the Prosecution has an ongoing duty to make disclosure as the need arises. There is no evidence before the Chamber to show that the Prosecution has failed to comply with this Rule. In its prior Decisions, the Chamber did not find that the Prosecution breached its obligations under Rules 66(A)(ii) of the Rules, but that in the interests of justice, it should assist the Defence in obtaining specific documents. In addition, the Chamber does not consider that the sole remedy for a violation of the Prosecution's disclosure obligation is the postponement of the trial, taking into account the right of the Accused to be tried without undue delay.[41]

26. On 16 February 2006, at the outset of the second trial session, the Trial Chamber had to rule again on a motion for a stay of proceedings until 60 days after all the material identified in the motion was disclosed.[42] The Trial Chamber noted that a number of disclosure issues had effectively been resolved by previous decisions, and that in each case, the Chamber took into consideration the rights of each Accused to a fair trial, including their rights to cross-examine a witness, to have adequate time and facilities to prepare their defence, and to be tried without undue delay.[43] As to the remaining disclosure issues, the Trial Chamber recalled that

> Breach of the Prosecution's obligations do not always create prejudice to the Accused, partly in cases where, as the appeals Chamber stated in the *Niyitegeka* case, the existence of the relevant exculpatory evidence is known and accessible to the Defence.
> When the disclosure of material which could assist the Accused to impeach the testimony of a Prosecution witness is made so late that it has an impact on the fairness of the trial, different lines of remedies have been utilized by Trial Chambers. The evidence could be excluded, the trial or the testimony could be postponed, the cross-examination of the witness could be deferred, or the witness could be re-called. In addition to these remedies, sanctions can be imposed against counsel when there is conduct which wilfully interferes with the administration of justice, obstructs the proceedings, or is contrary to the interests of justice.[44]

In the light of the specific circumstances of the case, the Trial Chamber concluded that the lack of diligence on the part of the Prosecutor in disclosing some statements as well as his failure to comply with his obligations to disclose exculpatory material had not substantially

[40] Motion for Continuance of Trial, filed by the Defence for Nzirorera on 14 July 2005, and Mathieu Ngirumpatse's Joinder, filed on 8 August 2005.
[41] *Karemera et al.*, Decision on the Continuance of Trial (TC), 14 September 2005, para. 8.
[42] Joseph Nzirorera's Motion for Stay of Proceedings, filed on 6 February 2006, and Mathieu Ngirumpatse's Joinder, filed on 9 February 2006. The Defence for Karemera supported only some of the submissions made by the Co-Accused (T. 16 February 2006, p. 5).
[43] T. 16 February 2006, pp. 2 and 3.
[44] *Ibid.*, p. 4.

handicapped the preparation of the defence, nor had it hampered the effective cross-examination of the Prosecution witnesses.[45]

27. It must be noted that the Appeals Chamber dismissed Joseph Nzirorera's appeal against the Chamber's oral Decision of 16 February 2006 in all respects.[46] Particularly, the Appeals Chamber found no error on the part of the Trial Chamber in declining to stay the proceedings and considered that "in long and complicated cases, it is necessary for a Trial Chamber to exercise its discretion to control the progress of the proceedings as appropriate, provided that it does not encroach on fair trial rights".[47] The Appeals Chamber also rejected Nzirorera's assertion that, in reaching its decision, the Trial Chamber had failed to adequately consider the history of disclosure violations by the Prosecution in this case.[48]

28. In light of these circumstances, the remaining Judges are satisfied that the rights of the Accused to a fair trial, including their rights to cross-examine the witnesses against them and to have adequate time and facilities to prepare their defence, were duly guaranteed despite disclosure issues. Where necessary, appropriate remedies and actions have been taken by the Trial Chamber to ensure a fair trial. The Judges do not find any circumstance or fact newly adduced by Joseph Nzirorera in the current submissions that could support another conclusion.

2. Admission of Evidence

29. Joseph Nzirorera, joined by Mathieu Ngirumpatse, contends that the Trial Chamber has, on 35 occasions, allowed the Prosecutor to submit evidence of material facts not included in the Indictment.[49] In his view, the admission of large swaths of evidence outside the Indictment has rendered the trial unfair by effectively replacing the case in the original indictment with a completely different one.[50]

30. According to the relevant provisions of the Statute and Rules of Procedure and Evidence, as well as the established jurisprudence of the Appeals Chamber, the Prosecutor has the obligation to state the material facts underpinning the charges in the indictment, but

[45] *Ibid.*, pp. 3 and seq.
[46] *Karemera et al.*, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006.
[47] *Ibid.*, para. 8.
[48] *Ibid.*, para. 18.
[49] Nzirorera's submissions, paras. 110-123.
[50] *Ibid.*, para. 111.

not the evidence by which such material facts are to be proven.[51] Whether particular facts are "material" depends upon the nature of the Prosecution case. Failure to set forth the specific material facts of a crime constitutes a defect in the indictment. In these circumstances, a Chamber must consider whether a fair trial requires an amendment of the indictment, an adjournment, or the exclusion of evidence outside the scope of the indictment.[52] In addition, according to the established jurisprudence of this Tribunal, a defect in the indictment may be cured where the accused has received timely, clear, and consistent information from the Prosecutor which resolves the ambiguity or clears up the vagueness.[53] When deciding whether a defective indictment has been cured, the essential question is whether, depending on the specific circumstances of each case, the accused was in a reasonable position to understand the charges against him or her and to confront the Prosecution case.[54] Where a Chamber considers that a defective indictment has been subsequently cured by the Prosecutor, it should further consider whether the extent of the defects in the indictment materially prejudices an accused's right to a fair trial by hindering the preparation of a proper defence.[55]

31. The Appeals Chamber has also held that when a material fact has not been sufficiently pleaded in the indictment, this alone does not render the evidence inadmissible.[56] The evidence can be admitted to the extent that it may be relevant to the proof of any allegation

---

[51] Statute, Articles 17(4), 19, 20(2), 20(4)(a) and 20(4)(b); Rules of Procedure and Evidence, Rule 47(C); *Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, paras. 25 and 470 ("*Ntakirutimana* Appeal Judgement"); *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003, paras. 301-303 ("*Rutaganda* Appeal Judgement"); *Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe*, Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 21 ("*Ntagerura* Appeal Judgement"); *Prosecutor v. Mladen Naletilic and Vinko Martinovic*, Case No. IT-98-34-A, Judgement (ICTY AC), 3 May 2006, para. 26 ("*Naletilic* Appeal Judgement").

[52] *Prosecutor v. Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 18.

[53] *Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004, para. 195 ("*Niyitegeka* Appeal Judgement"); *Ntagerura* Appeal Judgement, paras. 30; *Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006, para. 49 ("*Gacumbitsi* Appeal Judgement"); *Naletilic* Appeal Judgement, para. 25.

[54] *Rutaganda* Appeal Judgement, para. 303; see also: *Ntakirutimana* Appeal Judgement, paras. 27 and 469-472; *Ntagerura* Appeal Judgement, paras. 30 and 67; *Gacumbitsi* Appeal Judgement, para. 49.

[55] *Prosecutor v. Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 26.

[56] *Prosecution v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and ABZ Inadmissible" (AC), 2 July 2004, para. 15; *Prosecution v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-AR73, Decision on Pauline Nyiramasuhuko's Request for Reconsideration (AC), 27 September 2004, para. 12.

sufficiently pleaded in the indictment.[57] When deciding on the admissibility of evidence, a Chamber must also guarantee the protection of the rights of the Accused.[58]

32. These principles have been applied by the Trial Chamber in this case when adjudicating on the admission of evidence in the course of this trial. Contrary to Joseph Nzirorera's assertions, the Trial Chamber has not systematically admitted material facts which should have been pleaded in the Indictment.

33. In some instances, Defence Counsel for Joseph Nzirorera objected to the presentation of some evidence not on the basis of a defect in the form of the Indictment but on the ground of a lack of adequate notice that these facts pleaded in the Indictment would be included in the examination of the witness called to testify or on the basis that the evidence was not relevant to the charges in the Indictment.[59] On other occasions, some evidence was considered as admissible because it was not a material fact that needed to be pleaded in the Indictment.[60] The Trial Chamber also admitted evidence to the extent that it might be relevant to the proof of any allegation sufficiently pleaded in the indictment.[61] In other circumstances,

---

[57] *Ibidem*. See also: *Prosecutor v. Bagosora et al.*, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, footonote 40.

[58] See *Karemera et al.*, Oral decision, T. 27 February 2006, pp. 7-9; *Karemera et al.*, Decision on Defence Oral Motions for Exclusion of Witness XBM's Testimony, for Sanctions against the Prosecution and for Exclusion of Evidence outside the Scope of the Indictment (TC), 19 October 2006, para. 20. See also International Criminal Tribunal for Former Yugoslavia, Rules of Procedure and Evidence, Rule 89(D).

[59] See for e.g.: Speeches of President Sindikubabwo and Prime Minister Kambanda in Butare on 19 April 1994: T. 23 September 2005, pp. 2 and 4; Mugesera speech and meeting with Mathieu Ngirumpatse following the Mugesera's speech (T. 23 February 2006, pp. 26 and 28; the Defence withdrew its application); CDR party rally at MRND Palace in Gisenyi in March 1994 and Speech of Jean-Bosco Barayagwiza at that rally (T. 21 June 2006, pp. 27-35).

[60] See for e.g.: MRND meeting at Cyasimakamba in Kibungo in 1992 (T. 21 September 2005, pp. 12 and 16 and T. 22 September 2005, p. 19: The Chamber decided that it would not strike the witness' answer merely because he added more information than might have been necessary for the exact answer. The Presiding Judge explained that this evidence was probative, and did not fall within the category of evidence which should be excluded for the reasons of prejudice); Meeting on 7 April 1994 at the Hotel Diplomat between Ngirumpatse, Nzirorera and Interahamwe leaders concerning roadblocks and letter containing instructions (The Chamber noted that paragraphs 36, 37, 38 and 39 of the Indictment unambiguously put on notice the allegation that Mathieu Ngirumpatse participated in the setting of roadblocks and their control and that was part of the Prosecution's case. The Chamber therefore found that ALG's testimony fell within the framework of the allegations that were set out in the Indictment itself. In addition, the Chamber noted that some of the witness' testimony, particularly with regard to the letter and the specific instructions to set up a roadblock resulted from his response to the enquiry about how he knew that the MRND members, including Ngirumpatse, had authorized the roadblocks, T. 30 October 2006, p. 47).

[61] See for e.g.: Swearing-in ceremony of President Habyarimana on 5 January 1994 and violence that followed (admitted as historical background, T. 11 October 2005, p. 46); arrests and murders of Tutsis in Kigali in October 1990 (admitted as historical background; the Presiding Judge specified as follows: "we think that you are entitled to lead background information, we don't think that you should go so far as to lead evidence of crimes that were not referred to in the Indictment", T. 23 February 2006, pp. 25-26); Speeches of Mathieu Ngirumpatse at MRND rally in Kibungo in 1993 and in Murambi in 1993 (the Chamber specified: "no convictions can be based on anything that occurred at that meeting", and [...] "what we are permitting this evidence about is purely for the purpose of context and background information; "it has nothing to do with the

the Trial Chamber found admissible evidence on some material facts which were not explicitly set forth in the Indictment but of which the Accused had received timely, clear and consistent notice that it would be part of the Prosecution case against them.[62]

34. All along the proceedings, the Trial Chamber bore in mind the rights of the Accused, and found that it was satisfied that their rights to be informed of the charges against them and to have adequate time and facilities for the preparation of their defence were not infringed by the admission of evidence in question.[63] There is no reason for the remaining Judges to depart from the Trial Chamber's prior findings on each individual admission.

35. The Trial Chamber also emphasized that curing a defect in the Indictment must be the exception, and that when the indictment suffers from numerous defects, there still may be a risk of prejudice to the Accused, even if the defects are found to be cured:

> In particular, the accumulation of a large number of material facts not plead in the indictment reduces the clarity and relevancy of that indictment, which may have an impact on the ability of the Accused to know the case he or she has to meet for purposes of preparing an adequate

---

specific charges in the indictment and cannot be used for that purpose"; T. 27 February 2006, pp. 7-11); Evidence on a network called *réseau zero* (admitted to the extent that it is related to the existence of the *Akazu*; but inadmissible to prove the material fact that the Accused participated in this network, Decision on Defence Oral Motions for Exclusion of Witness XBM's Testimony, For Sanctions Against the Prosecution and for Exclusion of Evidence Outside the Scope of the Indictment (TC), 19 October 2006, para. 28); RTLM Ceremony at Mt. Muhe in September 1993, distribution of weapons in Kabari trading center in September 1993, meeting and distribution of weapons at Mutura commune office in January 1994, meeting of military leaders and population at Meridien Hotel in Gisenyi in May 1994 and massacre of Tutsis at Nyundo parish in Gisenyi (admitted for the sole purpose of showing the collaboration between civilians and military officials, Decision on Defence Oral Motions for Exclusion of Witness XBM's Testimony, For Sanctions Against the Prosecution and for Exclusion of Evidence Outside the Scope of the Indictment (TC), 19 October 2006, para. 42); Killings of Tutsi in Byahi secteur of Gisenyi in 1992 (admitted as a purely "background circumstance", T. 16 May 2006, p. 53); Killings of Tutsi at Mudende University in April 1994 and the participation of Colonel Anatole Nsengiyumva in that killings (admitted for the sole purpose of showing the cooperation between civilians and the military authorities, T. 21 June 2006, p.1: "The massacre itself cannot be a material fact that will be used against the Accused"; see also pp. 11-13); Interahamwe assaults against opposition party members in 1992 (admitted as historical background, "these are matters on which a conviction cannot be based", T. 8 June 2006, p. 25); Meetings between Interahamwe leaders and the accused in Murambi after 12 April 1994 (T. 9 November 2006, p. 26; Nzirorera telephone call to gendarmes to arrange release of Interahamwe who had attacked the Ruhengeri Court of Appeals (T. 4 December 2006, p. 35).

[62] See for e.g.: Admission of the speech of Leon Mugesera on 22 November 1992 (T. 10 October 2005, p. 50); the Chamber also allowed the Prosecution to question the witness as to the general reaction to Mugesera's speech. But it did not allow the question which sought to elicit the identity of specific individuals who were killed and the circumstances of their death because this introduced issues which were not pleaded in the Indictment and which adequate notice was not given (T. 10 October 2005, pp. 58-59); Meetings in Gisenyi in 1992 to 1993 and Nzirorera's presence at distribution of weapons in Gisenyi after 6 April 1994 at a ceremony at the 47th Battalion (Decision on Defence Oral Motions for Exclusion of Witness XBM's Testimony, For Sanctions Against the Prosecution and for Exclusion of Evidence Outside the Scope of the Indictment (TC), 19 October 2006, paras. 29-37); Meeting on 10 or 11 April 1994 at the Hotel Diplomat between MRND leaders and Interahamwe and the distribution of weapons after this meeting (T. 27 October 2006, p. 5); Presence of Karemera at 23 October 1993 "Hutu Power" rally and Speech of Karemera at 16 January 1994 MRND rally at Nyamirambo Stadium (T. 27 October 2006, p. 21).

[63] See particularly *Karemera et al.*, Decision on Defence Oral Motions for Exclusion of Witness XBM's Testimony, for Sanctions against the Prosecution and for Exclusion of Evidence outside the Scope of the Indictment (TC), 19 October 2006, paras. 11-20; also see references hereinafter.

> defence.
> Further, while the addition of a few material facts may not prejudice the Defence in the preparation of its case, the addition of numerous material facts increases the risk of prejudice, as the Defence may not have sufficient time and resources to investigate properly all the new material facts.
> Thus, where a Trial Chamber considers that a defective indictment has been subsequently cured by the Prosecution, it should further consider whether the extent of the defects in the indictment materially prejudice an accused's right to a fair trial, by hindering the preparation of a proper defence.[64]

The Trial Chamber clearly held that the admission of evidence by curing an Indictment requires continuous evaluation of their impact on the rights of the Accused. Accordingly, even if at a certain stage some evidence of material fact not pleaded in the Indictment is admitted, this does not prejudice subsequent consideration of the concept of the accumulation of curing.[65]

36. Having therefore also considered, as a whole, Joseph Nzirorera's objections to the admission of some evidence, the remaining Judges are satisfied that the trial has been fair and that the Accused are in a position to understand the charges against them and have benefited from adequate time and facilities to mount their defence.

3. Testimony of Prosecution Witnesses under Pseudonym

37. According to Joseph Nzirorera and Mathieu Ngirumpatse, the Trial Chamber has erred in law and denied their rights to a fair and public trial by granting a blanket authorization for each Prosecution witness to testify under a pseudonym and refusing to reconsider this protective order.[66]

38. This issue has already been adjudicated on several occasions, having due regard for the rights of the Accused. When deciding that the identifying information of protected Prosecution witnesses would not be disclosed to the public, the Trial Chamber explicitly balanced the need to protect witnesses with the rights of the Accused, in accordance with Rules 69 and 75 of the Rules and the established jurisprudence of the Tribunal.[67] The Trial Chamber ruled again later on the matter, when Joseph Nzirorera requested reconsideration of

[64] T. 27 October 2006, pp. 20-21.
[65] See for e.g.: *Karemera et al.*, Decision on Defence Oral Motions for Exclusion of Witness XBM's Testimony, for Sanctions against the Prosecution and for Exclusion of Evidence Outside the Scope of the Indictment (TC), 19 October 2006; T. 27 October 2006, pp. 20-21.
[66] Joseph Nzirorera's submissions, paras. 124-146.
[67] *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44-R75, Order on Protective Measures for Prosecution Witnesses (TC), 10 December 2004.

the protective orders.[68] At that time, the Trial Chamber considered that it was "still satisfied that the protective measures contained in its Order of 10 December 2004 will not prejudice the Defence".[69] In addition to these Decisions, for each Prosecution witness, the Trial Chamber has systematically heard Defence Counsel for Nzirorera on the same issue. In each case, his requests to reconsider the protective orders were dismissed on the ground that he had not shown the existence of any new fact or circumstance to support its application, or that if a new fact or circumstance had been shown to exist, it did not justify reconsideration of the protective orders.[70]

39. To support its assertion that the use of pseudonyms was not warranted in the present case, Joseph Nzirorera alleges, for the first time, that some Prosecution witnesses expressed no security concerns in their reconfirmation statements.[71] After reviewing these statements, the remaining Judges are not persuaded by this argument. The witnesses only state that they do not have any security concern "for the moment", namely at the time when the statement was taken in 2003 or 2004. This elliptic mention must be put in the particular context of the reconfirmation statements which are concise notes of one page drafted by an investigator with a view to reconfirming the content of a witness' anticipated testimony. In the Judge's view, these statements do not contain sufficient and clear information showing a new fact or circumstance justifying a different conclusion that the protective orders were warranted for these witnesses as well.

40 In any event, all along the proceedings, the Trial Chamber has sought to limit as much as possible the protective measures to what was strictly necessary, taking into account the rights of the Accused. Each time a witness has declared that he or she no longer has any security concerns and is ready to testify under his or her real name, the protective orders were

[68] *Karemera et al.*, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses (TC), 29 August 2005, para. 11.
[69] *Ibid.*, para. 12.
[70] The Defence Counsel submitted his application routinely for each Prosecution witness (see T. 16 February 2006, p. 27; T. 15 May 2006, p. 7; T. 22 May 2006, p. 19; T. 26 October 2006, p. 11; T. 8 November 2006, p. 3; T. 1 December 2006, p. 16; T. 8 December 2006, p. 4). During the trial session held in June 2006, while the Defence Counsel for Nzirorera made his routine application to withdraw the pseudonym (with respect to Witnesses BTH and XBM), he acknowledged that the Chamber had already ruled on that matter, but "wanted to make [his] record". The Chamber referred to its prior findings on the same matter, since this was a routine motion and it did not find a new circumstances justifying reconsideration (T. 8 June 2006, p. 9; T. 20 June 2006, p. 48).
[71] Nzirorera's submissions, para. 141. The Defence refers to the reconfirmation statements of Prosecution Witnesses ALZ, taken on 20 January 2004; AMC, taken on 20 January 2004; ANP, taken on 22 October 2003; AJY, taken on 14 January 2004; Witness GBU, taken on 21 October 2003; GBV, taken on 21 October 2003; KGV, taken on 22 January 2004; GOB, taken on 4 June 2003.

accordingly amended.[72] The Trial Chamber has also always aimed to enhance the fairness and publicity of the proceedings by ensuring that any closed session be reduced to the minimum required, and where it was found that a closed session was ultimately not warranted, it was ordered that the transcripts be considered and reclassified as open sessions.[73] Contrary to Joseph Nzirorera's assertion,[74] the remaining Judges are satisfied that the open session of the testimony of each witness was sufficiently extensive to allow public observation.

41. In light of these circumstances, the remaining Judges holds the view that no unfairness has resulted for the Accused from the use of pseudonyms by Prosecution witnesses.

4. Alleged Presentation by the Prosecutor of Perjured Testimony

42. Joseph Nzirorera, joined by Mathieu Ngirumpatse, contends that the Prosecutor has called witnesses who he knew or should have known would offer false testimony and, by doing so, has violated their right to a fair trial.[75] According to Nzirorera, Prosecution Witnesses Ahmed Mbonyunkiza, UB, ZF, BTH, AWB, ALG, HH and GBU provided evidence containing contradictions with their prior statements and testimonies, or with evidence from other Prosecution witnesses. He also points out that some of these witnesses have acknowledged or been found to have given false testimony in other instances.

43. Again the Accused submissions only reiterate their prior arguments and address Trial Chamber's prior findings thereto.[76] Concerning Witness UB, the Trial Chamber found that

---

[72] See Prosecution Witnesses Ahmed Mbonyunkiza (T. 20 September 2005, p. 22). Prosecution Witness Frank Claeys also testified under his name (T. 21 November 2006, p. 39). The Chamber waived the protective measures with regard to Prosecution Witness GBY, as requested by the Prosecutor Counsel who indicated that the witness wished to testify under his real name, subject to reviewing this waiver whereupon questions will have been put to the witness on this issue during his testimony before the Tribunal (T. 8 December 2006, p. 22).

[73] See, e.g., T. 20 September 2005, p. 12; T. 19 October 2005, p. 52-54; T. 20 October 2005, p.1-13; T. 20 October 2005, p.18; T. 13 February 2006, p. 9; T. 28 February 2006, p. 46; T. 22 May 2006, p. 1-2; T. 7 November 2006, p. 47; T. 10 November 2006, p. 34; T. 9 November 2006, p. 39 (the Chamber ordered that a portion of the closed session transcript of 8 November 2006 be placed in open session); T. 10 October 2005, p. 18 (the Chamber reconsidered the special protective measures for Witness T and accordingly granted the Defence motion to hear the witness in open session).

[74] Nzirorera's submissions, particularly at para. 145.

[75] Nzirorera's submissions, paras. 147-203. Prosecution Witnesses Ahmed Mbonyunkiza, UB, ZF, BTH, AWB, ALG, HH, GBU, as well as Prosecution witnesses who were initially called in the first trial to testify against André Rwamakuba while he was still indicted in the joint trial.

[76] See T. 14 October 2005, p. 19-21 (The Defence moved the Chamber to order an investigation for false testimony of Prosecution Witness Mbonyunkiza on the grounds that his testimony was in contradiction with the testimony of Prosecution Witness G. The Chamber denied the Motion stating that it was premature and that it could not initiate an investigation every time there was a contradiction of testimony); T. 20 October 2005, p. 54-56 (The Defence invited the Prosecution to withdraw the testimony of Prosecution Witness Mbonyunkiza); T. 1 March 2006, p. 36-37 (The Defence reiterated an application for an investigation for false testimony of Witness Mbonyunkiza during Witness UB's cross-examination). See also references hereinafter. So far, the Chamber has

there was an insufficient factual basis for initiating an investigation for false testimony.[77] The Trial Chamber also denied the motion filed by Joseph Nzirorera, supported by Mathieu Ngirumpatse, for investigation for false testimony of Witness Mbonyunkiza.[78] On that occasion, the applicable principles for a Chamber to order an investigation for false testimony according to Rule 91(B) of the Rules and the established jurisprudence of this Tribunal were recalled in detail. Specifically, it was emphasized that contradictory evidence between witnesses' testimony is an insufficient basis to demonstrate that a witness intended to mislead a Chamber and to cause harm, and therefore to order an investigation for false testimony.[79]

44. Each time there is an alleged contradiction in the testimony of a witness, it cannot be concluded that the witness has committed perjury. Should the remaining Judges admit the Joseph Nzirorera's interpretation of perjury, there would be no more room for an assessment of the credibility and reliability of the witnesses at the end of the case, while this assessment must be done considering the evidence as a whole.[80] Furthermore, Nzirorera will have an opportunity to rebut or challenge the Prosecution evidence in the presentation of its case. No unfairness can therefore result from the admission of alleged contradictory evidence at this stage. The existence of contradictions is a factor to be used when determining the probative value of the evidence presented by the parties during trial.[81]

45. Furthermore, the remaining Judges cannot see how Joseph Nzirorera and Mathieu Ngirumpatse can be prejudiced by the testimony of witnesses who did not give any evidence in this trial. According to Nzirorera, the Prosecutor had information in his possession from which he should have known that Witness AWB was prepared to give false testimony. This witness, however, refused to testify explaining specifically that he did not want to give false testimony against the Accused persons.[82] Nzirorera also submits that most of the witnesses scheduled to testify against André Rwamakuba during the first trial while the latter was still jointly indicted with Edouard Karemera, Mathieu Ngirumpaste and Joseph Nzirorera, were found to be unreliable. In his view, the Prosecutor also knew that these witnesses had

---

not been seized as such by any Defence Motion for an investigation for false testimony for Prosecution Witnesses ZF, ALG, HH, BTH and GBU. In its Decision of 29 December 2006, the Chamber stated the applicable law and necessary requirements for an order to investigate for false testimony.

[77] T. 28 February 2006, p. 2.

[78] *Karemera et al.*, Decision on Defence Motion for Investigation of Prosecution Witness Ahmed Mbonyunkiza for False Testimony (TC), 29 December 2006.

[79] *Ibid.*, para. 7.

[80] *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-T, Judgement (TC), 20 September 2006, paras. 62-69.

[81] *Karemera et al.*, Decision on Defence Motion for Investigation of Prosecution Witness Ahmed Mbonyunkiza for False Testimony (TC), 29 December 2006, para. 7.

[82] T. 6 July 2006, pp. 28-29.

prc vided conflicting statements to its own investigators and Rwandan authorities. Nzirorera's reference to witnesses in *Rwamakuba* case is, however, not relevant to the alleged unfairness of this trial since these witnesses were not called in this trial, as a result of the severance of Rwamakuba from this case.[83]

5. Failure of the Rwandan Government to Produce Statements of Prosecution Witnesses

46. Joseph Nzirorera, supported by Mathieu Ngirumpatse, claims that during the trial, the Accused have been required to cross-examine Prosecution witnesses in the absence of prior statements made to Rwandan authorities or on the basis of such statements disclosed at the last minute.[84] Nzirorera submits that his own efforts, the Prosecutor's efforts, and the requests made by the Trial Chamber, have not resulted in the timely production of the prior Rwandan statements of Prosecution witnesses needed for cross-examination.[85] In his view, the Trial Chamber has refused to enforce any of its requests and as a result, he has been denied his right to effectively cross-examine the Prosecution witnesses and therefore his right to a fair trial.[86]

47. Again, Joseph Nzirorera only reiterates arguments upon which the Trial Chamber in the instant case has already adjudicated. Numerous motions have been filed by the Accused on this ongoing issue and, as a result, several decisions have been delivered.[87] The Trial Chamber has provided every practicable facility under the Statue and the Rules in order to assist the Accused in presenting their case, in accordance with the established case-law of the Tribunal. The Prosecutor has also displayed continuous efforts, both past and present, in

[83] *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and André Rwamakuba*, Case No. ICTR-98-44, PT, Decision on Severance of André Rwamakuba and For Leave to File Amended Indictment (TC), 14 February 2005.

[84] Nzirorera's submissions, paras. 204-219.

[85] Nzirorera's submissions, paras. 218.

[86] Nzirorera's submissions, paras. 218 and 219.

[87] See: Decision on Motions for Order for Production of Documents by the Government of Rwanda and for Consequential Orders (TC), 13 February 2006; Decision on Defence Requests for Certification to Appeal Decision on Motions for Order for Production of Documents by the Government of Rwanda and for Consequential Orders (TC), 17 March 2006; Decision on Defence Motion to Report Government of Rwanda to United Nations Security Council (TC), 2 October 2006; Decision on Defence Motion to Compel Best Efforts to Obtain and Disclose Statements and Testimony of Witness UB (TC), 10 October 2006; Decision on Defence Motion for Further Order to Obtain Documents in Possession of Government of Rwanda (TC), 27 November 2006; Decision on Defence Motion for Exclusion of Witness GK's Testimony or for Request for Cooperation from Government of Rwanda (TC), 27 November 2006; Decision on Defence Motion to Obtain Documents Pertaining to Witness HH in Possession of Government of Rwanda (TC), 27 November 2006; Decision on Defence Motion for Request for Cooperation to Government of Rwanda: MRND Videotape (TC), 14 December 2006; see also Decision on Motions to Compel Inspection and Disclosure and to Direct Witnesses to bring Judicial and Immigration Records (TC), 14 September 2005, where the Chamber required, pursuant to Rule 98 of the Rules of Procedure and Evidence, the Prosecution to use its best efforts to obtain statements made to Rwandan authorities and records pertaining to the criminal prosecution of the Witnesses AWB, BDW, BGD, HH and KGV, as well as any other witness for whom such materials have not been fully disclosed.

seeking to provide the Accused with as many judicial records as possible from Rwandan authorities.[88] Furthermore, it appears that, in some instances, Nzirorera did not use the facilities at his disposal to obtain the documents sought or he failed to adduce any evidence or give any information of the existence of these records or their content or show how these documents may be relevant for the preparation of his defence.[89]

48. Moreover, where appropriate, the Trial Chamber also explicitly considered whether the rights of the Accused, including their rights to have adequate time and facilities for the preparation of their defence and to cross-examine a witness, were impaired by a late disclosure – or the absence of any disclosure – of Rwandan statements.[90] Depending on each circumstance, the Trial Chamber found that there was no prejudice caused to the rights of the Accused or that witnesses could be recalled where necessary. So far there has been no request made by the Accused to recall any witness. A review of the proceedings also shows that the Accused have extensively cross-examined the Prosecution witnesses.[91]

49. In light of all these circumstances, it cannot be concluded that the trial has been rendered unfair by alleged late disclosure, or alleged non-disclosure, of some Rwandan statements.

---

[88] See: Decision on Defence Motion for Exclusion of Witness GK's Testimony or for Request for Cooperation from Government of Rwanda (TC), 27 November 2006, para. 11; Decision on Defence Motion for Further Order to Obtain Documents in Possession of Government of Rwanda (TC), 27 November 2006, para. 12 (referring to: Prosecutor's Response to the Motion; see also Prosecutor's Submission Concerning Best Efforts to Obtain Rwanda Judicial Records of Witness HH, filed on 17 November 2006, following the Chamber's Order made orally on 16 November 2006. Further effort has been put in place by the Prosecution. In a recent will-say statement of Witness GK given on 7 November 2006, the witness provides details as to his judicial records, statements and testimonies he gave before Rwandan authorities. As a result, three documents were disclosed to the Defence.)

[89] See: Decision on Defence Motion for Further Order to Obtain Documents in Possession of Government of Rwanda (TC), 27 November 2006, paras. 14-15; *Decision on Defence Motion for Exclusion of Witness GK's* Testimony or for Request for Cooperation from Government of Rwanda (TC), 27 November 2006, paras. 10 and 14.

[90] See: Decision on Motions for Order for Production of Documents by the Government of Rwanda and for Consequential Orders (TC), 13 February 2006; Witness HH: T. 17 November 2006, p. 2; Decision on Defence Motion to Obtain Documents Pertaining to Witness HH in Possession of Government of Rwanda (TC), 27 November 2006; Witness GK: Decision on Defence Motion for Exclusion of Witness GK's Testimony or for Request for Cooperation from Government of Rwanda (TC), 27 November 2006, para. 12.

[91] The Prosecution Witnesses were cross-examined as follows: Ahmed Napoléon Mbonyunkiza, about six days; ALG, about six days; BTH, about four days; Frank Claeys, about two and a half days; G, about seven days; GK, about two days; GBU, about one and a half days; HH, about five and one quarter days; T, about five and one quarter days; UB, about nine and a half days; XBM, about four and one quarter days; ZF, about three and a half days. See also: Decision on Defence Motion to Obtain Documents Pertaining to Witness HH in Possession of Government of Rwanda (TC), 27 November 2006, para. 10: "The Chamber notes that the Defence has extensively cross-examined Witness HH where he openly admitted in court that he had lied on several occasions in his prior statements. Having heard Witness HH's testimony, the Chamber is of the view that the relevant credibility issues have been explored in a manner which would enable fair evaluation of the witness' credibility."

6. Taking Testimony of Witnesses G and T by Video-Link

50. Joseph Nzirorera, supported by Mathieu Ngirumpatse, contends that the testimony of two of the most important Prosecution witnesses, Witnesses G and T, by video-link violated their right to confront their accusers.[92] While Nzirorera recognizes that this right is not absolute, he contends that there was no necessity for the testimony of these witnesses to be taken by video-link. Relying on the Appeals Chamber Decision in the *Zigiranyirazo* case,[93] he submits that the Trial Chamber in this case erred when ordering the video-link testimony of Witnesses G and T. According to Nzirorera, there is a serious risk that the Appeals Chamber will reverse the Trial Chamber's decisions and exclude the testimony of Witnesses G and T. Accordingly, in his view, the remaining Judges should determine that it would not serve the interests of justice to continue a trial in which the hearing of the two most important prosecution witnesses by video-link constituted a denial of a fair trial to the Accused and will be called into question by a subsequent Appeals Chamber decision.[94]

51. Again, there is no need for the remaining Judges to fully reiterate the articulated reasoning in the Trial Chamber's prior findings on this issue.[95] It must be however emphasized that in its Decision, the Trial Chamber sought a fair and equitable balance between the need to afford full respect to the rights of the Accused and considerations relating to the protection of witnesses. It relied upon the relevant provisions of the Statute and the Rules as well as the established jurisprudence of the Tribunal, and found that granting an order to permit Witnesses G and T to testify by video-link did not infringe the Accused's rights, particularly their right to confront the witness, neither the Accused's ability to observe the demeanour of the witnesses.[96] At the Accused's request, the Trial Chamber also permitted each Defence team and the Prosecutor to send one representative each to the location from

[92] Nzirorera's submissions, paras. 220-260.
[93] *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-AR73, Decision on Interlocutory Appeal (AC), 30 October 2006.
[94] Nzirorera's submissions, para. 260.
[95] In the present case, four decisions were delivered on the same issue as a result of four motions submitted by the Defence for Nzirorera: Decision on the Prosecutor's Motion for Special Protective Measures for Witnesses G and T (TC), 14 September 2005; Decision on the Defence Motion to Unseal and for Application for Certification to Appeal Decision on the Prosecutor's Motion for Special Protective Measures for Witnesses G and T (TC), 7 October 2005; Decision on Defence Motion for Reconsideration of Special Protective Measures for Witness "T" (TC), 9 March 2006; Oral Order, T. 3 October 2005, p. 50.
[96] Decision on the Prosecutor's Motion for Special Protective Measures for Witnesses G and T (TC), 14 September 2005, paras. 13, 16 and 17. In its Decision of 7 October 2005, the Chamber reiterated that "[t]he special protective Measures ordered by the Chamber in the impugned Decision do not curtail the rights of the Accused, nor does the impugned Decision adversely affect the fairness of the trial." (Decision on the Defence Motion to Unseal and for Application for Certification to Appeal Decision on the Prosecutor's Motion for Special Protective Measures for Witnesses G and T, para. 11).

which Witnesses G and T would testify, in order to preserve the integrity of the proceedings.[97]

52. Furthermore, the Trial Chamber has already ruled upon Joseph Nzirorera's requests for disclosure of confidential documents filed by the Prosecutor in support of his motion for special protective measures for Witnesses G and T.[98] In each instance, the rights of the Accused, including their rights to fair and public proceedings and to cross-examine the Prosecution witnesses, were cautiously balanced with the need to protect the witnesses. Where appropriate, the Trial Chamber even ordered that an Annex filed confidentially by the Prosecutor concerning the special protective measures for Witnesses T be disclosed to the Defence in redacted form.[99]

53. Furthermore, a review of the testimony of Witnesses G and T shows that the Accused effectively and extensively exercised their rights to confront and cross-examine the witnesses. It is noteworthy that during the proceedings, Defence Counsel for Joseph Nzirorera described Witness T's testimony as "very truthful" and as "the most accurate testimony" heard during this trial.[100] In his current submissions, Nzirorera contends that some Prosecution witnesses made false testimony by comparing their evidence with the testimony of Witnesses G and T.[101] Such assertions make sense only if Nzirorera acknowledges, to a certain extent, that the evidence given by Witnesses G and T was truthful. The presence of representatives of each Accused at the location of the testimony of these witnesses also offered additional guarantees as to the fairness of the proceedings.[102]

54. The question is now whether in light of the recent Appeals Chamber decision in the *Zigiranyirazo* case,[103] the Trial Chamber's Decision to authorize the testimony of Witnesses G and T by video-link was erroneous and resulted in an injustice thereby rendering the trial unfair.

---

[97] . 3 October 2005, p. 50; Decision on Defence Motion for Reconsideration of Special Protective Measures for Witness "T" (TC), 9 March 2006.
[98] Decision on Joseph Nzirorera's Motion to Compel Inspection and Disclosure (TC), 5 July 2005, paras. 4-6; Decision on Defence Motion for Disclosure of the Affidavit of Richard Renaud Related to Witnesses G & T (TC), 8 August 2005; Decision on Joseph Nzirorera's Motion For Disclosure of a Confidential Annex (TC), 12 September 2005.
[99] Decision on Joseph Nzirorera's Motion for Disclosure of a Confidential Annex (TC), 12 September2005.
[100] Mr. Robinson stated as follows: "Witness T, I want to, first of all, thank you for your testimony that you've given over the past few days. I think that this has probably been the most accurate testimony that we've heard during this trial. And while we have some differences of recollection and perhaps some differences of opinion, we find your testimony to be very truthful, and I want to thank you for that." (T. 26 May 2006, p. 29).
[101] Nzirorera's submissions, paras. 165, 183 and 194.
[102] Witness G: T. 10 October 2005, p.1-2; Witness T: T. 22 May 2006, p. 8.
[103] *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-AR73, Decision on Interlocutory Appeal (AC), 30 October 2006.

55. In the *Zigiranyirazo* case, the Trial Chamber decided to hear the testimony of Mr. Bagaragaza in person in The Netherlands while the accused, Mr. Zigiranyirazo, participated via video-link from Arusha.[104] The question before the Appeals Chamber was therefore whether the accused's right to be tried in his or her "presence", enshrined in Article 20(4)(d) of the Statute, referred to the physical presence of the accused in court before the Trial Judges.[105] The Appeals Chamber found that "[b]oth the Tribunal's legal framework and practice as well as that of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") further reflect that Article 20(4)(d) provides for the physical presence of an accused at trial, as opposed to his facilitated presence via video-link".[106] As a result and under the specific circumstances of that case, the Appeals Chamber found that it was not satisfied that the Trial Chamber had properly exercised its discretion in deciding to impose limitations on Zigiranyirazo's s right to be present at his trial.[107]

56. The remaining Judges therefore do not agree with Joseph Nzirorera that the circumstances surrounding the testimony by video-link of Witnesses G and T are analogous to the facts in *Zigiranyirazo* case.

57. Furthermore, should the remaining Judges find that a continuation of the proceedings is in the interests of justice and should the Appeals Chamber subsequently find that the rights of the Accused were unwarrantedly and excessively restricted by taking the testimony of Witnesses G and T by video-link and that the Trial Chamber committed a discernible error, then the major risk would be for the Prosecutor to have the evidence of Witnesses G and T excluded.[108] In any event, a rehearing of the case would not be an appropriate remedy.

58. In view of these circumstances, the remaining Judges are satisfied that taking the testimony of Witnesses G and T by video-link did not render the trial unfair. No different conclusion is warranted following the Appeals Chamber's decision delivered in *Zigiranyirazo* case.

7. Interferences with the Right of the Defence to meet with Witnesses

59. Joseph Nzirorera, supported by Mathieu Ngirumpaste, submits that during the trial, the Prosecutor has interfered with the right of the Accused to interview Prosecution witnesses before their testimony.[109] He also claims that the Prosecution had attempted to interfere with

[104] *Ibid.*, para. 5.
[105] *Ibid.*, para. 8.
[106] *Ibid.*, para. 12.
[107] *Ibid.*, para. 17.
[108] *Ibid.*, para. 24.
[109] Nzirorera's submissions, paras. 261-279.

the interview between his Defence Counsel and Georges Rutaganda, who was not a Prosecution witness in this cas, but simply a detainee. In Nzirorera's view, his right to a fair trial was consequently infringed.

60 The remaining Judges note that each of these situations has already been adjudicated. Concerning the interview with Georges Rutaganda, the Trial Chamber in this case ruled twice on this matter, and granted Joseph Nzirorera's request to have his Defence Counsel meet with him without the presence of a representative of the Office of the Prosecutor.[110]

61. The other events raised in Joseph Nzirorera's submissions concern situations where his Defence Counsel requested to meet with Prosecution witnesses just before or during his or her testimony in court in order to show the witness any documents intended to be used during cross-examination and allegedly to save time in court.[111] The Trial Chamber has already dismissed the applications for meeting with Witnesses ZF and XBM considering that they were not warranted in light of the circumstances of the case.[112] It also granted in part Nzirorera's motion to reconsider protective orders as a result of incidents where the Prosecution Counsel had intervened during meetings between Defence Counsel and Prosecution witnesses.[113] On that occasion, the Trial Chamber explicitly referred to the jurisprudence of the Appeals Chamber that although each party has the right to contact and

---

[110] The Defence for Nzirorera filed a first motion on 24 March 2005 ("Joseph Nzirorera's Motion for Order Allowing Meeting with Defence Witness"); the Chamber granted in part the motion and order that the Defence Counsel meets Georges Rutaganda without the presence of a representative of the Prosecution, but in the presence of a representative of the Registrar (Decision on Joseph Nzirorera's Motion for Order Allowing Meeting with Defence Witness (TC), 13 July 2005). On 11 October 2005, at the Defence's request (Joseph Nzirorera's Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness, filed on 13 July 2005), the Chamber reconsidered its prior decision: it held that the Defence Counsel and Georges Rutaganda could meet without the presence of any third party, and ordered that the latter should not have any documents in his possession during the said meeting (Decision on Joseph Nzirorera's Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness (TC), 11 October 2005).

[111] See Joseph Nzirorera's Motion for Reconsideration of Witness Protection Order, filed on 25 September 2006. See also Witness ALG:T. 23 May 2006, p. 26; Witness T: T. 26 October 2006, p. 52; Witness HH: T. 8 November 2006, p. 2; Witness GBU: T. 5 December 2006, p. 19.

[112] The Chamber denied the Defence motion to meet Witness ZF on the ground that he was in the middle of his testimony and that it was therefore not appropriate for the Defence Counsel to meet him (T. 23 May 2006, p. 26). Concerning Witness XBM, the Chamber noted that the witness did agree on conditions that the meeting did take place and during the meeting a problem developed. As previously indicated, the Chamber did not find appropriate to make an order to compel a Prosecution witness to speak with Defence counsel, as requested by the Defence. The Chamber also denied the Defence Motion to exclude the testimony of Witness XBM, considering that it was completely without merit in relation to the factual basis which was apparently being laid (T. 14 June 2006, p. 37).

[113] Decision on Reconsideration of Protective Measures for Prosecution Witnesses (TC), 30 October 2006, para. 4. In its motion filed on 25 September 2006, the Defence submitted that the Prosecution had repeatedly interfered with the right of the Accused to interview Prosecution witnesses who consent to meet with Counsel for the Accused before they give testimony. The Prosecution did not dispute that it intervened during those meetings but submitted that it had no choice in order to avoid any misrepresentation to, or coercion of the witness to obtain the witness' co-operation (see Prosecutor's Response filed on 29 September 2006).

interview a witness, this is not without limitation; this should not interfere with the course of justice, notably by generating for the witness a feeling of coercion or intimidation.[114] The Trial Chamber also questioned the repetitive requests made by Defence Counsel for Nzirorera to meet with Prosecution witnesses at the outset of their testimony in court without showing a legitimate need which went beyond the need to prepare a more effective cross-examination.[115]

62. It must be noted that there has been no allegation of any difficulty during meetings when the witness was not about to give evidence in court.[116] In the current submissions, Joseph Nzirorera even acknowledges that his Defence Counsel has had no difficulty meeting with witnesses in Rwanda.[117] His Counsel has also had the opportunity to meet with three Prosecution witnesses while they were already present in Arusha for the purpose of testifying before the Chamber.[118] In addition, the Trial Chamber also facilitated the meeting between the Defence Counsel for Nzirorera and 13 potential Prosecution witnesses, who could only be contacted and interviewed in accordance with the protective measures applicable to each of them.[119]

63. In view of these circumstances, the remaining Judges do not consider that the right of the Accused to meet with a witness has been unfairly impaired, or even impaired at all, and that any unfairness of the trial has resulted.

64. In conclusion, the remaining Judges note that Joseph Nzirorera's submissions, supported by Mathieu Ngirumpatse, are mainly a repetition of arguments already submitted to the Trial Chamber in this case and upon which it has already ruled. Each issue raised by these co-Accused in their submissions have already been carefully considered, adjudicated and monitored in a manner consistent with the applicable law, including the Statute, the Rules

---

[114] *Ibid.*, paras. 8 and 10; the Chamber relied upon *Prosecutor v. Mile Mrksic*, Case No. IT-95-13/1-AR73, Decision on Defence Interlocutory Appeal on Communication with Potential Witnesses of the Opposite Party (AC), 30 July 2003.

[115] *Ibid.*, para. 10. As a result, the Chamber ordered that "[e]xcept under exceptional circumstances, such meeting should not take place at the outset of the witness' testimony in court".

[116] See *Karemera et al.*, Decision on Reconsideration of Protective Measures for Prosecution Witnesses (TC), 30 October 2006, para. 9.

[117] Nzirorera's submissions, para. 275.

[118] *Ibidem.*

[119] Decision on Defence Written Request to Interview Prosecution Witnesses (TC), 20 September 2005. The Defence requested permission to contact 13 persons who were potential Prosecution witnesses and could have information concerning Witness T. The Chamber granted the Motion, allowing the Defence to meet with Witnesses GMT, COB and CBO without the presence of any representative of the Prosecution; and referred the matter to Trial Chamber I in *Bagosora* case with respect to Witnesses ADD, AHP, APA, APB, APC, APD, APE, DCY, FBU, and Trial Chamber II in *Ndindiliyimana* for Witness HAF, since these Chambers were the competent organs to rule upon the protective measures applying to each of these persons.

of Procedure and Evidence and prevailing jurisprudence. Particularly, the Trial Chamber has constantly sought to guarantee a fair trial to each co-Accused and duly taken into account their rights. As a result, depending on each circumstance, the Trial Chamber has either found that the rights of the Accused were not infringed; or ordered the appropriate remedy where necessary. Additional measures have also been decided by the Chamber to continuously enhance the fairness of the proceedings. The remaining Judges do not find in the submissions filed by Joseph Nzirorera and Mathieu Ngirumpatse any factual circumstance or error in law that would justify a different conclusion as to the fairness of the trial.

65. The mere fact that the Trial Chamber has delivered decisions dismissing, in whole or in part, some Accused's requests cannot be considered as rendering the trial unfair. In this case, the Trial Chamber paid, conversely, constant attention to the issues raised by the Accused. Over a period of two years, more than 80 decisions were delivered on Defence motions, which in some circumstances were repetitive applications. This judicial process could furthermore be subject to Appeal Chamber's review at a later stage.

66. Moreover, if Joseph Nzirorera concedes that the appellate process will remedy defects at the trial level then the trial process cannot be said to be unfair, since the appeal is part of this process. It is illogical to say that the possibility of an appellate reversal is an indication that the trial is unfair because appellate review is one of the fair trial guarantees.

67. In view of the circumstances, the remaining Judges consider that there have been no irregularities in the course of the trial which cast doubt on its fairness. The Judges must now determine unanimously what would best serve the interests of justice – a continuation or a rehearing of the proceedings – taking into account all circumstances of the case.

3. Continuation of the Proceedings in the Interests of Justice

68. Joseph Nzirorera, joined by Mathieu Ngirumpatse, contends that the interests of justice would not be served by continuing the trial for various other reasons than the fairness of the trial. In his view, it will take the substitute Judge many months before he or she is in a position to certify sufficient familiarity with the case to join it. Relying upon hours spent in courtroom, the number of exhibits admitted as well as the oral and written motions made, Nzirorera estimates 479 hours of videotapes of trial sessions (for 110 trial days over a 15 month period).[120] In Mathieu Ngirumpatse's view, it is not in the interests of justice to continue the proceedings with a substitute Judge because he or she will have an imperfect

[120] Nzirorera's submissions, para. 16.

knowledge of the case. Particularly, he contends that the substitute Judge will only have a limited access to many oral decisions delivered by the Trial Chamber in this case.[121] Ngirumpatse also stresses the fact that many decisions related to the evidence were issued by the Trial Chamber during the proceedings – decisions in which the substitute Judge did not participate. Nzirorera further observes that the Trial Chamber sat in absence of Judge Kam for four days during the cross-examination of Prosecution Witness Mbonyunkiza. He therefore contends that the replacement of Judge Short will mean that only one of the three Judges on the Trial Chamber will have observed the demeanour of this witness on cross-examination. As to Edouard Karemera, he consents to the continuation of the proceedings provided that the substitute Judge enjoys enough time to review the video-tapes of all the records in the instant proceedings and therefore be familiar with the case.[122]

69. The preference for live testimony to be heard by each and every judge in the adjudicative process is enshrined in the Rules.[123] But this does not form an unbending requirement.[124] The Rules and the case-law show that exceptions can be made to live testimony. For example, under Rule 15 *bis* (A) of the Rules, a witness can be heard by two judges over a short period of time.[125] In these circumstances, the absent Judge will review the records of the proceedings, including the transcripts, audio and video-records, to observe the demeanor of the witness. Rule 90 (A), prescribing the general principle of oral testimony, explicitly provides for an exception to hear a witness by means of a deposition.[126] In application of Rules 54 and 75 of the Rules, Trial Chambers have also permitted the hearing of witnesses by video-link where necessary.[127]

70. The Appeals Chamber has also stressed, in case of continuation of proceedings under Rule 15 *bis*, the need to have the substitute Judge "familiarise" himself or herself with "the

[121] Ngirumpatse' s submissions, para. 8.
[122] Karemera's submissions, p. 3.
[123] See Rules of Procedure and Evidence, Rule 90 (A). *Nyiramasuhuko* Appeals Chamber Decision on Continuation, para. 25; *Karemera* Appeals Chamber Decision on Continuation, para. 60.
[124] *Nyiramasuhuko* Appeals Chamber Decision on Continuation, para. 25.
[125] Rules of Procedure and Evidence, Rule 15 *bis* (A): "If (i) a Judge is, for illness or other urgent personal reasons, or for reasons of authorised Tribunal business, unable to continue sitting in a part-heard case for a period which is likely to be of short duration, and (ii) the remaining Judges of the Chamber are satisfied that it is in the interests of justice to do so, those remaining Judges of the Chamber may order that the hearing of the case continue in the absence of that Judge for a period of not more than five working days".
[126] Rules of Procedure and Evidence, Rule 90 (A): "Witnesses shall, in principle, be heard directly by the Chambers unless a Chamber has ordered that the witness be heard by means of a deposition as provided for in Rule 71". Rule 71 (A) reads as follows: "At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial, and appoint, for that purpose, a Presiding Officer."
[127] *Nyiramasuhuko* Appeals Chamber Decision on Continuation, para. 33; *Karemera* Appeals Chamber Decision on Continuation, para. 58.

record" of the proceedings, whatever that record may contain. This familiarization can be done through the transcripts, audio and video-records of the testimonies.[128]

71. In the present case, 13 witnesses have been heard so far over a list of more than a hundred Prosecution witnesses.[129] Thanks to video-recording of each witness, accurate transcripts, extensive reliance on printed exhibits, significant reliance on filmed and taped evidence, the fidelity and accessibility of the trial record in this case is so high that the gap in mastery of the case between the substitute Judge and the sitting Judges is likely to be of little practical significance. In the opinion of the remaining Judges, a substitute Judge should have little difficulty mastering and being familiar with the case within a reasonable amount of time. The fact that the substitute Judge did not participate in the decision making process of prior decisions of the Trial Chamber will also have little practical significance on the proceedings. First, he or she will review all of them. Second, the existence of these prior decisions will not preclude him or her from expressing his or her view on any issue at any stage of the proceedings.

72. Furthermore, although Judge Kam was indeed absent for four days during the cross-examination of Prosecution Witness Mbonyunkiza,[130] each of the remaining Judges of the Trial Chamber was able to observe, at first-hand, the witness' demeanour for approximately 11 day period, including for the major part of his cross-examination.[131] It must be also stressed that in addition to seeing the witness for those days, Judge Kam reviewed the transcripts, audio and video-records of Witness Mbonyunkiza's testimony for the four days during which he was not present. He is in as good a position as he would have been had he been present throughout the testimony.

73. In view of these circumstances, the remaining Judges are satisfied that the substitute Judge will be in a position to familiarize himself or herself with the records of the proceedings.

---

[128] *Karemera* Appeals Chamber Decision on Continuation, paras. 57-58.

[129] On 4 October 2006, the Prosecutor filed an amended witness list. On 11 December 2006, the Chamber ordered him to drastically reduce the number of witnesses being called to give evidence of rape and sexual assault in relation to Count Five of the Indictment (Decision on Prosecution Motion for Admission of Evidence of Rape and Sexual Assault Pursuant to Rule 92*bis* of the Rules; and Order for Reduction of Prosecution Witness List (TC), 11 December 2006, paras. 22-28).

[130] See T. 26, 27, 28 and 29 October 2005.

[131] The witness started his testimony on 20 September 2005; he was examined in chief for full four days (T. 20, 21 and 22 September 2005; on 23 September 2005, the Chamber adjourned at 11.04 am); he was then cross-examined by Defence Counsel for Ngirumpatse (T. 26 and 27 September 2005, full days), the Defence Counsel for Karemera (T. 27 and 28 September 2006, full days) and the Defence Counsel for Nzirorera (T. 28 September 2006, full day; on 29 September 2006, the Chamber adjourned at 3.40 pm; T. 3 October 2006, full day; T. 24 October 2005, full day; on 21, 25, 27 and 28 October, he testified in alternative with Prosecution Witness G).

74. As described above, the remaining Judges have already concluded to the overall fairness of the proceedings, despite the contrary contention of Joseph Nzirorera and Mathieu Ngirumpatse.[132]

75. In that respect, it must be particularly emphasized that the admission of some evidence by the Trial Chamber in this case does not preclude the future Trial Chamber from considering, at a later stage and particularly at the time of the Judgement, whether accumulations of curing the Indictment have resulted in an unfair trial and decide the appropriate remedy, including exclusion of evidence.

76. The remaining Judges are no more persuaded by Joseph Nzirorera's argument that the admission of the evidence in question will expand the scope and therefore the duration of the trial and consequently result in unfairness to the Accused. The Defence does not have the same burden of proof as the Prosecutor and does not have to adduce rebuttal evidence to the Prosecution case. The Defence's evidence must only raise a reasonable doubt within the Prosecution case.[133]

77. A fair trial also encompasses the right of each Accused to be tried without undue delay.[134] This element, as well as the fact that the Accused are currently detained while the proceedings are ongoing, must also be taken into account by the remaining Judges when determining whether a continuation of the proceedings would serve, or not, the interests of justice.

78. Contrary to Mathieu Ngirumpatse's contention, the remaining Judges do not consider that the right of the Accused to be tried without undue delay can no longer be guaranteed. The reasonableness of the length of the current proceedings must be assessed in light of several factors, including the complexity of the case, the complexity of the investigations, the joinder of Accused, the number of motions filed by the parties.[135]

---

[132] See above.

[133] *Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (Reasons) (AC), 1 June 2001, para. 113; *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001, paras. 205-206; *Niyitegeka* Appeal Judgement, paras. 60-61.

[134] *Nyiramasuhuko* Appeals Chamber Decision on Continuation, para. 24: "a trial is inequitable if it is too long drawn out. Speed, in the sense of expeditiousness, is an element of an equitable trial."

[135] According to the jurisprudence of this Tribunal, which reflects the jurisprudence of international bodies on human rights, the reasonableness of the length of the proceedings must be assessed on a case by case basis, in light of several factors, including: the gravity of the charges against the Accused; the complexity of the case; the complexity of the proceedings, including the complexity of the investigations, the joinder of Accused; the conduct of the Accused; the number of motions filed by the parties; and the conduct of the organs of the Tribunal, including the Prosecution and the Registry. See *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Defence Motion for Stay of Proceedings (TC), 3 June 2005, para. 19, and the references quoted therein.

79. It is the remaining Judges view that the time it would take for familiarization by the substitute Judge is much less than the time required for a rehearing. This is because the review time could be continuous whereas the rehearing process necessitates holding hearings that will be necessarily interrupted and divided in several sessions.

80. Furthermore, the remaining Judges consider that the experience gained during the 15 months of the trial will inform the Trial Chamber's decision-making on the efficient and effective management of the trial process and to the completion of the trial without undue delay, including scheduling for improved and faster presentation of the evidence in the trial and diminishing or eliminating the regurgitation of issues already adjudicated upon.

81. In view of all the circumstances of the case, the remaining Judges finds that a continuation of the proceedings will facilitate the fundamental right of the Accused to be tried without undue delay. This will also contribute to limiting the length of the provisional detention of the Accused.

82. Additionally, the fact that one of the Accused consents to the continuation of the proceedings requires consideration of his rights to a trial without undue delay. An alternative to a continuation would be a bifurcated trial with the additional expenditure of judicial resources. The remaining Judges also consider that a burden would be placed on witnesses who have already testified and are called again. There is a risk of evidence becoming unavailable. Other associated risks would include a change in the current composition or strategy of the Defence teams. These factors are accorded some weight by the Judges in the balancing exercise involved in the present Decision.

83. Joseph Nzirorera also notes that a continuation of the proceedings with a substitute Judge can only be done once according to Rule 15 *bis* (D) of the Rules.[136] Therefore, in his view, any loss of a Judge will require that the trial automatically be restarted, and at a much more advanced stage.

84. In the opinion of the remaining Judges, this argument is purely speculative. It is appropriate here to take in consideration all the circumstances of the case, and not possible unforeseen circumstances that could arise.

85. Joseph Nzirorera, joined by Mathieu Ngirumpatse, also submits that the interests of justice would not be served by continuing the trial because the proceedings, if continued, are unlikely to be completed within the mandate of the Tribunal.[137] He submits that according to

[136] Nzirorera's submissions, para. 18.
[137] Nzirorera's submissions, paras. 14-20; Ngirumpatse's submissions, para. 8.

United Nations Security Council resolutions and statements made by the President of the Tribunal, this mandate should be completed by the end of 2008, while in the instant case, the Prosecutor has indicated that he would not be in a position to complete his case until December 2007. The Defence teams have also represented that they will not be able to complete their case by end of 2008. In light of these circumstances, Nzirorera and Ngirumpatse request the remaining Judges to order a rehearing of the case, without any time limit, or even to consider alternatives to continuing the trial, including referring the case to a national jurisdiction other than Rwanda.[138]

86. Although the Co-Accused Edouard Karemera consents to the continuation of the proceedings with a substitute Judge, he also expresses concerns as to the completion strategy of the Tribunal by end of 2008.[139] He queries as to the necessary steps to be taken in order to extend the Tribunal's mandate for the *Karemera et al.* case and also queries whether it would be more appropriate to transfer the case to a national jurisdiction.

87. In the view of the remaining Judges, the completion strategy by 31 December 2008 is not equivalent to the mandate of this Tribunal and is more of a target date. There is nothing to suggest that unfair decisions and actions will be taken with regard to cases that are pending on 31 December 2008. Cases are managed by Trial Chambers taking into account the rights of each and every accused, including the right to a fair trial. In that respect, the remaining Judges do not share the pessimistic view of the Accused that the trial could not be completed within the next two years using appropriate methods in the management of the proceedings while guaranteeing the rights of the Accused. The remaining Judges consider, therefore, that the trial could be completed by 31 December 2008 but that if it is not, reasonable decisions will be taken in the interests of justice and taking into account the rights of each co-Accused.

88. Both Edouard Karemera and Mathieu Ngirumpatse outline the fact that the Prosecutor had many years to present his case.[140] They request to have sufficient time for the preparation and presentation of their defence. Particularly, Karemera requests the remaining Judges to clarify what time will be allotted to the Defence to present its case.

89. Each Accused has a right to adequate time and facilities to prepare his defence. Throughout the trial process, this right has influenced the Trial Chamber's decisions. The recomposed Trial Chamber will continue to guarantee those rights. The actual time to be

[138] *Ibidem.*
[139] Karemera's submissions, p. 4.
[140] Mathieu Ngirumpatse considers that the Prosecution had eight years to prepare its case (from 1998 to 2005); Edouard Karemera estimates that the Prosecution had three years to present its case since 2004.

allotted to the defence of each Accused will be determined in accordance with particular circumstances and in relation to their rights.

90. Concerning a referral of the Indictment to a *national jurisdiction*, the remaining Judges note that they have no power to order such a referral because the President has not designated them as a referral Chamber in accordance with Rule 11 *bis* (A) of the Rules.[141]

91. In conclusion, considering all the circumstances of the case, and in particular the fairness of the trial, the rights of each Accused to be tried without undue delay and the length of their provisional detention, the remaining Judges find unanimously that a continuation of the proceedings would best serve the interests of justice.

ACCORDINGLY, THE REMAINING JUDGES DECIDE to continue the proceedings with a substitute Judge.

Arusha, 6 March 2007, done in both English and French.

Dennis C. M. Byron
Presiding Judge

[Seal of the Tribunal]

With the consent and on behalf of
Gberdao Gustave Kam
Judge
(absent at the time of the signature)

[141] Rules of Procedure and Evidence, Rule 11 *bis* (A) (emphasis added):
If an indictment has been confirmed, whether or not the accused is in the custody of the Tribunal, the *President may designate a Trial Chamber* which shall determine whether the case should be referred to the authorities of a State:
(i) in whose territory the crime was committed; or
(ii) in which the accused was arrested; or
(iii) having jurisdiction and being willing and adequately prepared to accept such a case,
so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda
Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie
Tel: 255 57 504207-11 504367-72 or 1 212 963 2850 Fax: 255 57 504000/504373 or 1 212 963 2848/49

PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION – ARUSHA

Date: **07 March 2007**

Case Name / *Affaire:* **The Prosecutor vs.**
- Joseph NZIRORERA
- Mathieu NGIRUMPATSE
- Edouard KAREMERA

Case No /*Affaire No.*: **ICTR-98-44-T**

To: *A:*

		received by / *reçu par:*	ALO:	received by / *reçu par*
☐	TC1			
☐	Judge E. Møse, President	.....	☐	.....
☐	Judge J. R. Reddy	.....	☐	.....
☐	Judge S. A. Egorov	.....	☐	.....
☐	Judge F. R. Arrey *(Karera)*	.....	☐	.....
☐	....., *SLO*	.....	☐	.....
☐	C. Gosnell, Co-ordinator	.....		
☐	TC2			
☐	Judge W. H. Sekule	.....	☐	.....
☐	Judge A. Ramaroson	.....	☐	.....
☐	Judge K. R. Khan *(Bizimungu et al.)*	.....	☐	.....
☐	Judge A. J. N. de Silva	.....	☐	.....
☐	Judge S. B. Bossa *(Nyiramasuhuku et al.)*	.....	☐	.....
☐	Judge L. G. Muthoga *(Bizimungu et al.)*	.....	☐	.....
☐	Judge F. R. Arrey *(Muvunyi)*	.....	☐	.....
☐	Judge E. F. Short *(Bizimungu et al.)*	.....	☐	.....
☐	Judge T. Hikmet *(Ndindiliyimana et al.)*	.....	☐	.....
☐	Judge S. K. Park *(Ndindiliyimana et al.)*	.....	☐	.....
☐	....., SLO	.....	☐	.....
☐	A. Leroy, Co-ordinator	.....		
☐	A. Marong *(Ndindiliyimana et al.)*	.....		
☒	**TC3**			
☐	**Judge A. Vaz** *(Seromba)*	.....	☐	P. Mathiam.....
☐	**Judge I. M. Weinberg de Roca** *(Zigiranyirazo)*	.....	☐	C. Rassi.....
☐	**Judge K. R. Khan**	.....	☐	M. Knowlan.....
☒	**Judge D. C. M. Byron**	.....	☐	J. Greenspoon.....
☐	**Judge L. G. Muthoga** *(Zigiranyirazo)*	.....	☐	P. Mathiam .....
☐	**Judge F. R. Arrey** *(Rukundo)*	.....	☐	S. Unnikrishnan.....
☐	**Judge E. F. Short** *(Karemera et al.)*	.....	☐	K. Ardault.....
☒	**Judge K. Hökborg** *(Seromba & Rwamakuba)*	.....	☐	C. Duffy.....
☐	**Judge G. G. Kam** *(Seromba, Karemera et al. &*	.....	☐	N. Ferraro.....
☒	*Rwamakuba)*	.....	☐	M. I. Mbadinga.....
	E. O'Donnell, SLO			
☐	**C. Denis, Co-ordinator** *(Karemera et al. &*	.....		
☐	*Rwamakuba)*	.....		
☐	**H. Gogo, Co-ordinator** *(Seromba)*	.....		

☒ **OTP / BUREAU DU PROCUREUR**
☐ Senior Trial Attorney in charge of case: **D. Webster** received by .....

☒ **DEFENSE**
☐ Accused / *Accusé:* **J. Nzirorera, M. Ngirumpatse & E. Karemera** complete / *remplir* " CMS4 FORM"
☐ Lead Counsel / *Conseil Principal:*.... **P. Robinson, C. Hounkpatin & D. Diagne**
☐ In / à Arusha Arusha .....(signature) ☐ by fax complete / *remplir* " CMS3bis FORM"
☐ Co-Counsel / *Conseil Adjoint:*... **P. N. M. Ngimbi, F. Weyl & F. Sow**
☐ In / à Arusha Arusha .....(signature) ☐ by fax complete / *remplir* " CMS3bis FORM

All Decisions: ☐ Appeals Chamber Unit, The Hague ☐ S. Chenault, Jurist Linguist
All Decisions & Important Public Documents: ☐ Press & Public Affairs ☐ Legal Library

From: *De:* ☐ J.-P. Fomété (Chief, CMS) ☐ N. Diallo (TC1) ☐ R. Kouambo (TC2) ☒ **C. Hometowu (TC3)** ☐ F. A. Talon (Appeals/Team IV)

Cc: ☐ A. Dieng ☐ A. Miller, OLA, NY ☐ D. Registrar ☐ S. Menon ☐ M. Niang ☐ S. van Driessche
☐ WVSS ☐ Spokesperson ☐ E. O'Donnell ☐ DCDMS ☐ P. Enow

Subject *Objet:* **Kindly find attached the following document(s) / *Veuillez trouver en annexe le(s) document(s) suivant(s):***

Documents name / *titre du document*	**Date Filed / *Date enregistrée***	**Pages**
DECISION ON CONTINUATION OF THE PROCEEDINGS, *RULE 15bs OF THE RULES OF PROCEDURE AND EVIDENCE (ENGLISH & FRENCH)*	**06/03/2007**	**33 & 37**